

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

TESTIMONY OF LAURENCE M. BROCK

D.T.E. 03-9

**SUBMITTED ON BEHALF OF
FITCHBURG GAS AND ELECTRIC LIGHT COMPANY**

May 9, 2003

1 I. INTRODUCTION

2 Q. Please state your name and business address.

3 A. My name is Laurence M. Brock. My business address is 6 Liberty Lane West,
4 Hampton, New Hampshire 03842.

5

6 Q. For whom do you work and in what capacity?

7 A. I am Vice-President and Controller for Unitil Service Corp. ("USC"), the service
8 affiliate of the Unitil system companies. I am also the Controller of Fitchburg
9 Gas and Electric Light Company, ("FG&E"). I have been employed by Unitil
10 (the "Company") since June, 1995.

11

12 Q. Please summarize your professional qualifications, educational background and
13 business experience prior to joining Unitil.

14 A. I am a Certified Public Accountant in the State of New Hampshire. In 1981, I
15 graduated from the University of New Hampshire with a Master's Degree in
16 Business Administration. In 1977, I received a Bachelor's Degree from Loyola
17 College of Montreal. In 1970, I graduated from Boston College High School. I
18 completed my Public Accounting work experience requirement at Coopers &
19 Lybrand, ("C&L"), in Boston, Mass. After leaving C&L, and prior to joining
20 Unitil, I was employed in businesses engaged in diversified manufacturing
21 activities.

22

1 Q. Please summarize your responsibilities at Unitil.

2 A. As Controller, I am responsible for the Company's accounting and financial
3 reporting functions. Those responsibilities include ensuring the company is in
4 compliance with the financial reporting rules and regulations promulgated by: the
5 Securities and Exchange Commission, ("SEC"), the Federal Energy Regulatory
6 Commission, ("FERC"), the Internal Revenue Service, ("IRS"), the
7 Massachusetts Department of Telecommunications and Energy, ("MDTE"), the
8 New Hampshire Public Utilities Commission, (NHPUC"), and the standards of
9 Generally Accepted Accounting Principles, ("GAAP"), as defined in the
10 pronouncements of the Financial Accounting Standards Board.

11

12 Q. Have you testified in regulatory proceedings previously?

13 A. Yes, I have testified before the Department on behalf of Fitchburg Gas and
14 Electric Light Company. I have also testified as a Company witness before the
15 New Hampshire Public Utilities Commission.

16

17 Q. What is the purpose of your testimony in this proceeding?

18 A. The purpose of my testimony is to describe Unitil's investment in
19 Enermetrix.com, Inc. ("Enermetrix") and to explain why Unitil did not consider
20 Enermetrix to be an affiliate of FG&E.

21

22

1 I. THE UNITIL SYSTEM OF COMPANIES

2 Q. Please briefly describe the organization of Unitil Companies.

3 A. Unitil Corporation ("Unitil") is a registered public utility holding company under
4 the Public Utility Holding Company Act of 1935. Unitil directly owns two
5 distribution companies: FG&E and Unitil Energy Systems, Inc. ("UES") which
6 was formed in 2002 as a result of the consolidation of Concord Electric Company
7 ("CECo") and Exeter & Hampton Electric Company ("E&H"). Unitil also owns
8 Unitil Power Corp., a wholesale power company that provided all-requirements
9 power supply to CECo and E&H between 1986 and 2003; Unitil Realty, which
10 owns certain real property used by the corporation; Unitil Service Corp., a service
11 company that provides management and administrative services to other Unitil
12 affiliates at cost; and Unitil Resources, Inc., which includes USource and provides
13 energy brokerage and other services on a competitive basis.

14
15 Q. Please describe the shared management and services used by Unitil and its
16 affiliates.

17 A. Since the formation of Unitil in 1984 and the merger with FG&E in 1992, Unitil
18 has centralized many of the utility operating functions, previously performed by
19 each of the operating companies. The functions have been consolidated through
20 USC, in conformance with the guidelines of the Securities and Exchange
21 Commission for service companies owned by public utility holding companies.
22 The functions which have been consolidated at USC included: customer service,

1 regulatory, finance and accounting; engineering and operations; energy services;
2 technology services; and administration and management services.
3

4 Q. Does USC provide these same services to Unitil's non-regulated affiliate, Unitil
5 Resources, Inc.?

6 A. Yes. Unitil and FG&E requested, and were granted, a waiver under the
7 Department's standards of conduct to allow Unitil Resources, Inc. to use the
8 shared services of USC, provided that Unitil Resources, Inc. does not do business
9 in FG&E's service territory.
10

11 Q. Does Unitil Resources, Inc. or USource conduct business with FG&E or UES?

12 A. No.
13

14 III. UNITIL'S INVESTMENT IN ENERMETRIX

15 Q. Can you briefly describe Enermetrix?

16 A. In 1998, when Unitil first invested in Enermetrix, it was a closely held, privately
17 owned company headquartered in Maynard, Massachusetts with operations
18 throughout the U.S. Enermetrix began operating in 1996 as North American
19 Power Brokers, Inc. to deliver energy brokering and consulting services to the
20 deregulated energy industry. It changed its name in August, 1999, to reflect its
21 focus on delivering Internet technology and business process standards to the
22 energy industry.

1 Enermetrix's primary business was operating an Internet-based marketplace for
2 the purchase and sale of electricity and natural gas. In 2001, market participants
3 in more than 85 local distribution company service territories in Massachusetts
4 and 26 other states were using the Enermetrix Exchange. The Enermetrix
5 Exchange allowed retail users of energy to "post" their energy requirements on
6 the Exchange, where suppliers could review and bid to supply these requirements.
7 The Exchange was designed to be an easily accessible and transparent method for
8 suppliers to receive information and to bid on transactions.

9

10 Q. What was Unitil's investment in Enermetrix between September 2001 and March
11 2002?

12 A. Unitil has been a non-controlling, minority investor in Enermetrix. Unitil's
13 investment in Enermetrix for the years 1998 through 2002 is shown on Schedule
14 LMB-1. Between September 2001 and March 2002, Unitil was one of
15 approximately 30 investors in Enermetrix and held an 8.6% equity interest in
16 Enermetrix. During the initial years of its investment, 1998 and 1999, Unitil held
17 an approximately 10.6% equity interest in Enermetrix. In subsequent years,
18 however, Unitil's interest was diluted with subsequent financings to raise
19 additional capital.

20

21 Q. Did any of Unitil's officers or directors serve as officers or directors of
22 Enermetrix?

1 A. Robert Schoenberger, the CEO and Chair of Unitil, was a member of the
2 Enermetrix Board of Directors from 1998 to March 2002, when Unitil sold its
3 investment in Enermetrix. James Daly, then a Senior Vice President with Unitil,
4 also served on the Board in 1998 and 1999. After the Series D financing,
5 effective in December 2000, Unitil held one (Mr. Schoenberger) of 10 Board
6 seats.

7
8 Q. When did Unitil decide to sell its investment in Enermetrix?

9 A. In 2001, with the general decline in the dot-com market, Unitil began to reassess
10 its investment in Enermetrix. The slow development of the competitive markets
11 for energy supply and generally lower market valuations for companies like
12 Enermetrix contributed to Unitil's decision to record a non-cash charge of \$3.7
13 million in the fourth quarter of 2001 to recognize the decrease in fair value of its
14 non-utility investment in Enermetrix. During the first quarter of 2002, Unitil
15 began working on the sale of its remaining interest in Enermetrix, which it sold in
16 April, 2002, for \$1.5 million in cash and improved commercial terms for use of
17 the Enermetrix Software Network.

18
19 Q. What was the relationship between USource and Enermetrix?

20 A. USource provides a wide range of energy brokering and related services to large
21 and medium sized customers. One way that USource processes brokering
22 transactions is through the Internet-based retail energy exchange operated by

1 Enermetrix. USource became a buy-side member of the Enermetrix Exchange in
2 1998. USource continues to hold a license for the use of the Enermetrix Software
3 Network.

4
5 Q. Who were the officers and directors of Enermetrix?

6 A. The officers and directors of Enermetrix in 2001 and 2002 are shown on Schedule
7 LMB-2.

8
9 Q. Who were the equity owners of Enermetrix, besides Unitil?

10 A. The equity owners of Enermetrix, following its last financing in 2000, are shown
11 on Schedule LMB-1.

12
13 IV. UNITIL'S ACCOUNTING FOR AND RELATIONSHIP WITH ENERMETRIX

14 Q. How would you describe Unitil's relationship with Enermetrix?

15 A. Unitil was a non-controlling, minority investor in Enermetrix.

16
17 Q. In accounting for Unitil's investment in Enermetrix, did Unitil treat Enermetrix as
18 a subsidiary or affiliate.

19 A. No. Under the authoritative accounting rules, investments by one corporation in
20 the stock of another are generally classified according to the percentage of the
21 voting stock of the investee held by the investor. The degree to which one
22 corporation acquires an interest in the common stock of another and the ability of

1 the investor to exercise “significant influence” over the policies of the investee
2 corporation generally determines the accounting treatment of the investment
3 subsequent to purchase. Accordingly and properly under GAAP, Unitil treated
4 its purchase of the equity securities of Enermetrix as an investment at its cost, not
5 as an acquisition of, or joint venture with, an affiliated company.

6

7 Q. Specifically, which standard accounting rules govern such treatment?

8 A. *Opinions of the Accounting Principles Board No. 18* (New York: AICPA, 1971)
9 par.17 “The Equity Method of Accounting for Investments in Common Stock”
10 (“APB 18”) provides the central guidance for accounting for Unitil’s purchase of
11 the Enermetrix equity securities. According to the guidance of APB 18, an
12 investor who holds less than 20% ownership is presumed to have little or no
13 influence over the investee corporation, an investor who holds more than 20% but
14 less than 50% ownership has significant influence over the investee, and an
15 investor who holds over 50% ownership has a controlling interest in the investee
16 corporation.

17

18 Q. How do the levels of ownership and the degree of influence affect the accounting
19 for the investment by the investor?

20 A. Investors with less than 20% ownership and little or no influence record the
21 investment at cost (or lower of cost or market, “LOCOM”), only record income if
22 dividends are received, and record losses if the fair value of the investment drops

1 below cost. Investors with less than 50% but more than 20% ownership are
2 presumed to have significant influence and record the investment under the
3 Equity Method in which the investor recognizes its proportionate share of the
4 investee's earnings and losses. Investors with over 50% ownership have a
5 controlling interest and are required to consolidate the investee corporation as a
6 subsidiary.

7

8 Q. How specific is the 20% threshold in determining significant influence for
9 accounting purposes?

10 A. APB 18 states: *"In order to achieve a reasonable degree of uniformity in*
11 *application, the Board concludes that an investment (direct or indirect) of 20% or*
12 *more of the voting stock of an investee should lead to a presumption that in the*
13 *absence of evidence to the contrary an investor has the ability to exercise*
14 *significant influence over an investee. Conversely, an investment of less than*
15 *20% of the voting stock of an investee should lead to a presumption that an*
16 *investor does not have the ability to exercise significant influence unless such*
17 *ability can be demonstrated."* This standard is repeated in Financial Accounting
18 Standards Board Interpretation No. 35 "Criteria for Applying the Equity Method
19 of Accounting for Investments in Common Stock - an Interpretation of APB
20 Opinion No. 18", par. 6. Although judgment is frequently required to assess
21 significant influence over the policies of an investee, Unitil and its external

1 auditors, Grant Thornton LLP, agreed that Unitil's investment in Enermetrix was
2 appropriately accounted for under the LOCOM accounting rules of APB 18.

3

4 Q. What further evidence is there that Unitil treated its investment in Enermetrix as
5 an investment in a non controlled corporation?

6 A. Initially, Unitil recorded its investment in Enermetrix at cost and, during the
7 period that Unitil held the Enermetrix securities, the Company recorded no
8 income from Enermetrix. Further, the LOCOM rules of APB 18 were later
9 modified by Statement of Financial Accounting Standards (SFAS) No. 115,
10 "Accounting for Certain Investments in Debt and Equity Securities" which
11 requires companies to determine whether a decline in the fair value of its
12 investment in equity securities is other than temporary. As a result, Unitil
13 recorded the \$3.7 million write-down of its investment in Enermetrix in the fourth
14 quarter of 2001 as noted above.

15

16 Q. During the time it held equity interest in Enermetrix, did Unitil hold 'substantial
17 control' over Enermetrix?

18 A. No. Unitil never reached the threshold of holding substantial control over the
19 policies of Enermetrix and certainly by the time of the energy solicitations by
20 FG&E, what little influence Unitil had as an investor in Enermetrix had
21 significantly diminished. As a practical matter, Enermetrix raised over \$60
22 million in total equity financing up to 2001. Although Unitil's initial \$3 million

1 investment in 1998 in the Series B financing round was sufficient to gain Unitil
2 one Board seat, Unitil's subsequent investments of \$1 million each in the Series C
3 and Series D rounds paled in relation to the total of \$20 million raised in the
4 Series C round and the \$35.5 million raised in the Series D round. By the
5 beginning of 2001, Enermetrix was clearly under the significant influence of the
6 Series C and Series D equity holders and Unitil had minimal influence in the
7 decision making at Enermetrix.

8

9 Q. Are there other facts which support the conclusion that Unitil did not hold
10 'substantial control' over Enermetrix?

11 A. Further, Unitil was one of at least 30 investors in Enermetrix in 2001 and 2002.
12 While no single investor held a majority of the equity in the company during that
13 time period, there were several significant equity holders, including Dusquesne
14 Enterprises (17.24%) and Insight Capital Partners (14.7%). Additionally, at that
15 time two of the founding principals each held 10.31% of the equity in the
16 company, while Enermetrix employees held 19.34% through the employee stock
17 option plan. Other investors included G. E. Capital Equity Investments (7.74%),
18 Cinergy Ventures, L.L.C. (4.46%), and Aliant Energy Resources, Inc. (2.98%).

19

20 Q. Do you believe that Enermetrix and FG&E were subject to the "common control"
21 of Unitil?

1 A. No. FG&E is a wholly-owned subsidiary of Unitil Corporation, whose operations
2 are fully integrated with the Unitil system of companies, through shared
3 management and administrative services. Enermetrix was a privately held
4 corporation in which the employees and several other investors held the
5 controlling interest. Unitil was a non-controlling, minority investor in
6 Enermetrix, not a controlling owner.

7
8 Q. Do you believe that FG&E used Enermetrix to broker its default service supplies
9 in order to improve Unitil Corp.'s investment in Enermetrix?

10 A. No. As Mr. Foote indicates, FG&E used Enermetrix to improve its access to
11 potential default service suppliers, and to hopefully reduce prices for its
12 customers. Enermetrix earned a brokering fee, paid directly by the suppliers, of
13 less than \$20,000 for the two solicitations. Even if Unitil Corp were accounting
14 for its investment in Enermetrix under the Equity Method rules of APB 18,
15 (which it was not because its ownership interest and degree of exercising little
16 influence over the policies of Enermetrix determined that it must use the cost
17 basis accounting treatment of APB 18), it is not reasonable that FG&E would
18 deliberately favor the use of Enermetrix to produce, at best, an equity interest in a
19 transaction of less than \$2,000.

20

21

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